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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	No. 43114
Plaintiff-Respondent,)	
)	Ada Co. Case No.
vs.)	CR-2014-4787
)	
JOSHUA ROBERT BURNS,)	
)	
Defendant-Appellant.)	
_____)	

BRIEF OF RESPONDENT

**APPEAL FROM THE DISTRICT COURT OF THE FOURTH JUDICIAL
DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE
COUNTY OF ADA**

HONORABLE LYNN G. NORTON
District Judge

LAWRENCE G. WASDEN
Attorney General
State of Idaho

PAUL R. PANTHER
Deputy Attorney General
Chief, Criminal Law Division

RUSSELL J. SPENCER
Deputy Attorney General
Criminal Law Division
P.O. Box 83720
Boise, Idaho 83720-0010
(208) 334-4534

**ATTORNEYS FOR
PLAINTIFF-RESPONDENT**

SALLY J. COOLEY
Deputy State Appellate
Public Defender
P.O. Box 2816
Boise, Idaho 83701
(208) 334-2712

**ATTORNEY FOR
DEFENDANT-APPELLANT**

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STATEMENT OF THE CASE

Nature Of The Case

Joshua Robert Burns appeals from his conviction for felony driving under the influence and trafficking in methamphetamine, entered upon his conditional guilty plea. On appeal he claims that the district court erred in denying his suppression motion and that it abused its sentencing discretion.

Statement Of The Facts And Course Of The Proceedings

At around 1:30 p.m. on April 4, 2014, Sergeant Durrell was dispatched to check the welfare of a person in distress. (12/11/2014 Tr., p.11, L.20 – p.12, L.7.) The officer found Burns parked at the end of a driveway, slumped behind the wheel of a running vehicle, apparently unconscious and sweating profusely. (Id., p.12, L.8 – p.13, L.14.) The officer tried to get Burns' attention and ultimately succeeded in coaxing him to open his door. (Id., p.13, L.15 – p.14, L.4.) Burns was slipping in and out of consciousness. (Id., p.14, Ls.6-12.) Thinking Burns could be experiencing a significant medical problem, Sergeant Durrell called for assistance from paramedics. (Id., p.14, Ls.13-21.) The officer asked Burns questions about alcohol or drug use and, while most questions went unanswered, Burns said he took Seroquel. (Id., p.15, Ls.7-16.) Burns also admitted to previously attempting suicide, and Sergeant Durrell continued to ask if Burns may have overdosed. (Id., p.15, Ls.17-22.)

While waiting for paramedics to arrive, Sergeant Durrell removed two pieces of luggage from Burns' vehicle, setting them on top of the car, and then scanned the rest of the car to make certain Burns did not have access to weapons. (Id., p.15, L.23 – p.16, L.17.) Once paramedics arrived, Sergeant Durrell backed away so they would

have access to Burns. (Id., p.16, Ls.14-19.) The paramedics shared Sergeant Durrell's concern that Burns may have overdosed. (Id., p.16, Ls.20-24.) The officer assisted them by searching the luggage for prescriptions that Burns may have overdosed on, and by giving the bottles to paramedics so they could make a list of all the medications. (Id., p.16, L.24 – p.18, L.6.) During that search, Sergeant Durrell opened two unlocked cases, in which he saw paraphernalia and a white powdery substance. (Id., p.18, L.7 – p.19, L.4.) Later investigation revealed the substance to be cocaine, and baggies of methamphetamine were also discovered. (Id., p.35, L.2 – p.36, L.23.)

Meanwhile, Burns had been taken by paramedics to St. Luke's Hospital for medical evaluation. (State's Ex. 1.) Burns was admitted at around 2:15. (State's Ex. 2.) Deputy Vickers was dispatched to the hospital to watch Burns. (12/11/2014 Tr., p.28, Ls.1-8.) Burns gave the officer permission for a nurse to draw his blood, which was taken at around 4:00 p.m. (Id., p.28, L.18 – p.29, L.11.) The blood draw showed evidence of methamphetamine and other drugs. (PSI, pp.82-83.)

The state charged Burns with felony driving under the influence, trafficking in methamphetamine, possession of cocaine with the intent to deliver, possession of paraphernalia, and driving without privileges. (R., pp.58-60.) Burns filed a motion to suppress the evidence obtained from both the search of his car and his blood draw. (R., pp.77-84.) After a hearing on the motion (12/11/2014 Tr., pp.5-65), the district court denied the suppression motion (Id., p.63, L.1 – p.64, L.8).

In exchange for the state dismissing other charges, Burns entered conditional guilty pleas to the charges of driving under the influence and trafficking in methamphetamine, reserving his right to appeal the denial of his suppression motion.

(R., pp.136-38.) The district court entered judgment against Burns and imposed concurrent unified sentences of 10 years with two years fixed on the driving under the influence conviction and 12 years with three years fixed on the trafficking in methamphetamine conviction. (R., pp.153-56.) Burns later filed a Rule 35 motion requesting a reduction in his sentence (R., pp.168-69), which the district court denied (R., pp.173-75). Burns filed a notice of appeal timely from his judgment of conviction. (R., pp.162-63.)

ISSUES

Burns states the issues on appeal as:

1. Did the district court err when it denied Mr. Burns' motion to suppress?
2. Did the district court abuse its discretion by imposing an excessive sentence in light of the mitigating factors that exist in this case?

(Appellant's brief, p.6.)

The state rephrases the issues as:

1. Has Burns failed to show error in the district court's denial of his motion to suppress evidence?
2. Has Burns failed to show an abuse of the district court's sentencing discretion?

ARGUMENT

I.

Burns Has Failed To Show Error In The District Court's Order Denying His Motion To Suppress Evidence

A. Introduction

Responding to a medical emergency, where paramedics and officers were concerned that Burns may have overdosed on medications, Sergeant Durrell opened containers to assist medical responders in ascertaining what medications Burns had taken. (12/11/2014 Tr., p.11, L.22 – p.13, L.2; p.16, L.18 – p.17, L.2.) Sergeant Durrell discovered many prescription bottles, which were catalogued by the paramedics, in addition to other drug paraphernalia and narcotics. (Id., p.17, L.3 – p.19, L.4.) Burns later moved to suppress this evidence on the ground that it was obtained without a warrant. (R., pp.77-84.) The district court denied Burns' motion, holding that Sergeant Durrell's intrusion into the containers to search for medications was supported by his community caretaking function. (12/11/2014 Tr., p.63, Ls.6-12.) Once the officer had opened the containers, the contraband was in plain sight. (Id., p.63, Ls.13-19.)

On appeal, Burns challenges the district court's denial of his suppression motion, asserting that Sergeant Durrell's actions were unnecessary once paramedics arrived and therefore not part of his community caretaking function. (Appellant's brief, pp.7-12.) Burns' argument fails. Application of the correct legal standards to the facts found by the district court shows no error by the district court.

B. Standard Of Review

On review of a ruling on a motion to suppress, the appellate court accepts the trial court's findings of fact that are supported by substantial evidence and exercises

free review of the trial court's determination as to whether constitutional standards have been satisfied in light of the facts found. State v. Willoughby, 147 Idaho 482, 485-86, 211 P.3d 91, 94-95 (2009). At a suppression hearing, the power to assess the credibility of witnesses, resolve factual conflicts, weigh evidence, and draw factual inferences is vested in the trial court. State v. Valdez-Molina, 127 Idaho 102, 106, 897 P.2d 993, 997 (1995).

C. The District Court Correctly Denied Burns' Suppression Motion

"[B]ecause the ultimate touchstone of the Fourth Amendment is 'reasonableness,' the warrant requirement is subject to certain exceptions." Brigham City, Utah v. Stuart, 547 U.S. 398, 403 (2006) (citations omitted). A warrant is not required where "the exigencies of the situation make the needs of law enforcement so compelling that the warrantless search is objectively reasonable under the Fourth Amendment." Id. (citations and quotations omitted). "The reasonableness standard imposed by the Fourth Amendment requires that the nature of the intrusion upon the individual's privacy interest be balanced against the public need and governmental interest promoted by the action taken." State v. Barrett, 138 Idaho 290, 293, 62 P.3d 214, 217 (2003) (citations omitted). "An action is 'reasonable' under the Fourth Amendment, regardless of the individual officer's state of mind, as long as the circumstances, viewed *objectively*, justify the action." Brigham City, 547 U.S. at 404 (quoting Scott v. United States, 436 U.S. 128 (1978) (emphasis original, brackets omitted). "The officer's subjective motive is irrelevant." Id. (citation omitted).

Courts have repeatedly recognized that when members of law enforcement take action consistent with their community caretaking function, such action is reasonable

and does not violate the Fourth Amendment. Barrett, 138 Idaho at 293, 62 P.3d at 217. The community caretaking function involves the duty of the police to help individuals that officers believe are in need of immediate assistance. State v. Wixom, 130 Idaho 752, 754, 947 P.2d 1000, 1002 (1997) (citing In re Clayton, 113 Idaho 817, 748 P.2d 401 (1988)). “In analyzing community caretaking function cases, Idaho courts have adopted a totality of the circumstances test.” Id. “The constitutional standard in community caretaking function cases is whether intrusive action of police was reasonable in view of all surrounding circumstances.” Wixom, 130 Idaho at 754, 947 P.2d at 1002 (quoting State v. Waldie, 126 Idaho 864, 867, 893 P.2d 811, 814 (Ct. App. 1995)) (brackets omitted). “[T]he emergency aid doctrine [falls] within the community care-taking function exception.” Barrett, 138 Idaho at 295, 62 P.3d at 219.

A review of the totality of the circumstances in this case supports the district court’s conclusion that the officer’s conduct was reasonable under the community caretaking function. This case represents a model of community caretaking. Sergeant Durrell was dispatched, not on a criminal investigation, but on a welfare check. (12/11/2014 Tr., p.11, L.20 – p.12, L.7.) Arriving on the scene, he found Burns in clear distress slumped behind the wheel of a running vehicle, unconscious and sweating profusely. (Id., p.12, L.8 – p.13, L.14.) Concerned for Burns’ welfare—worried that he may have overdosed or attempted suicide—Sergeant Durrell called for assistance from paramedics. (Id., p.14, L.13 – p.15, L.22.) The officer was apparently sufficiently distracted by his concern for Burns that he neglected to pat Burns down when performing a standard protective sweep. (Id., p.20, L.17 – p.21, L.3.)

Upon their arrival, paramedics also shared Sergeant Durrell's concern that Burns may have overdosed. (Id., p.16, Ls.18-24.) The officer assisted paramedics by searching through Burns' luggage for prescriptions and other medications that Burns may have overdosed on, giving the bottles he found to paramedics so they could list the medications and know how to help Burns. (Id., p.16, L.24 – p.18, L.6.) It was only during that search that Sergeant Durrell encountered the paraphernalia and other narcotics. (See Id., p.18, L.7 – p.19, L.4.) Under the totality of the circumstances, as determined by the district court, Sergeant Durrell's actions were supported under the community caretaking function.

On appeal Burns argues, contrary to all of this evidence, that Sergeant Durrell's assisting of the paramedics was not justified under the community caretaking exception. (Appellant's brief, pp.7-12.) His argument hinges on his assertion that this assistance was "unsolicited" or "unrequested." (Id., pp.10-12.) This argument fails on multiple grounds. First, that the officer's assistance was "unsolicited" or "unrequested" is not among the factual findings of the district court. (See 12/11/2014 Tr., p.58, L.24 – p.61, L.2; p.63, Ls.6-19.) Nor is any such declaration contained within the portion of transcript cited by Burns. (See Id., p.23, L.1 – p.24, L.20.) Burns' argument, therefore, lacks factual support from the record.

Moreover, his argument lacks legal support. The state is unaware of any authority, and Burns has not cited any, requiring a police officer to wait for a solicitation or request from paramedics before he is permitted, under the community caretaking function, to render assistance in an emergency. Because Burns has failed to present

any authority supporting this argument, this claim of error is waived. State v. Zichko, 129 Idaho 259, 263, 923 P.2d 966, 970 (1996).

In fact, not only is Burns' argument unsupported by Idaho case law, it is contrary to analogous precedent articulated by the Court of Appeals in State v. Cutler, 143 Idaho 297, 141 P.3d 1166 (Ct. App. 2006). In that case, an officer was dispatched to a parking lot where a man was found incoherent and seated in the driver's seat of his car, which was parked haphazardly in front of a closed store. Id. at 300, 141 P.3d at 1169. Medical personnel were already there when the officer arrived and reported that although "Cutler was extremely lethargic," he "did not appear to need medical assistance." Id. The officer nevertheless remained on scene and, after "the medical personnel moved away from Cutler's vehicle, the officer observed a handgun on the ledge between the driver's seat and the doorsill." Id. The officer removed the gun, determined it was unloaded, and removed Cutler from the vehicle and placed him in handcuffs for "safety purposes." Id. A subsequent frisk for additional weapons uncovered two pocket knives and a loaded magazine for the gun. Id. The officer then searched Cutler's car for additional weapons whereupon he found methamphetamine and paraphernalia. Id.

Cutler argued both that his detention violated the Fourth Amendment and that the officer had no lawful basis to search his vehicle for weapons. Cutler, 143 Idaho at 301, 141 P.3d at 1170. The Court of Appeals disagreed, concluding the officer's actions were reasonable and justified as part of the officer's community caretaking function. On the detention issue, the Court reasoned:

The officer's testimony established that he was motivated by his genuine concern for Cutler's welfare. Following the frisk of Cutler for

weapons, the officer knew that, in addition to the handgun, Cutler possessed its ammunition and two pocket knives. In light of Cutler's condition, it was reasonable for the officer to believe that it may have been unsafe to leave Cutler in control of a vehicle, a handgun with ammunition, and two knives. Further, Cutler's privacy interest had already been compromised to the extent of the emergency medical personnel's intrusion. That intrusion was minimally exceeded by the officer's decision to remain at the scene and ascertain whether further assistance was needed. Therefore, the public interest in preventing the type of harm that could result from improper handling of a motor vehicle or firearm justified a brief detention to ascertain whether Cutler needed transportation, was gravely disabled due to mental illness, presented a danger to himself or others, or simply needed to rest.

Cutler, 143 Idaho at 303, 141 P.3d at 1172. Rejecting Cutler's argument that the officer's subsequent search was unlawful, the Court explained:

[T]he officer's motivation in searching Cutler's vehicle was not to find evidence of a crime. Rather, the officer searched Cutler's vehicle because he was concerned that, in light of Cutler's impaired condition, it was unsafe to allow him access to weapons. Therefore, the officer was authorized to conduct a limited search of Cutler's vehicle for weapons pursuant to his community caretaking function.

Id. at 305, 242 P.3d at 1174.

If an officer's decision to remain on scene and render aid to a person who paramedics have determined does not need aid, and that officer's subsequent search of the person's vehicle are reasonable under the community caretaking function, then Sergeant Durrell's assisting paramedics with the necessary task of searching for the medications on which Burns potentially overdosed is also reasonable.

The district court correctly determined that Sergeant Durrell's actions were justified under the community caretaking function. Burns has failed to show any error in

the district court's ruling. The district court's order denying Burns' motion to suppress evidence should be affirmed.

II.

Burns Has Failed To Establish An Abuse Of The District Court's Sentencing Discretion

A. Introduction

Burns argues that, in light of allegedly mitigating factors, the district court abused its discretion by imposing concurrent sentences of 10 years with two years fixed and 12 years with three years fixed on his respective convictions for felony driving under the influence and trafficking in methamphetamine. (Appellant's brief, pp.13-15.) Burns has failed to establish an abuse of the district court's sentencing discretion.

B. Standard Of Review

"Sentencing decisions are reviewed for an abuse of discretion." State v. Moore, 131 Idaho 814, 823, 965 P.2d 174, 183 (1998) (citing State v. Wersland, 125 Idaho 499, 873 P.2d 144 (1994)).

C. The District Court Did Not Abuse Its Discretion By Imposing Concurrent Sentences Of 12 Years With Three Years Fixed And 10 Years With Three Fixed On Burns' Respective Felony Convictions

Where a sentence is within statutory limits, an appellant is required to establish that the sentence is a clear abuse of discretion. State v. Baker, 136 Idaho 576, 577, 38 P.3d 614, 615 (2001) (citing State v. Lundquist, 134 Idaho 831, 11 P.3d 27 (2000)). To carry this burden, Burns must show that his sentence is excessive under any reasonable view of the facts. Baker, 136 Idaho at 577, 38 P.3d at 615. A sentence is reasonable if appropriate to achieve the primary objective of protecting society, and any

or all of the related sentencing goals of deterrence, rehabilitation, or retribution. State v. Wolfe, 99 Idaho 382, 384, 582 P.2d 728, 730 (1978). While the Court reviews the whole sentence on appeal, it presumes that the fixed portion of the sentence will be the defendant's probable term of confinement. State v. Oliver, 144 Idaho 722, 726, 170 P.3d 387, 391 (2007). In deference to the trial judge, the Court will not substitute its view of a reasonable sentence where reasonable minds might differ. State v. Toohill, 103 Idaho 565, 568, 650 P.2d 707, 710 (Ct. App. 1982).

The sentences imposed by the district court, far from being excessive, were, if anything, lenient and are supported by the nature of Burns' crimes. Burns pleaded guilty to trafficking in methamphetamine (R., pp.136-38), a violation of Idaho Code § 37-2732B(a)(4). Under Idaho Code § 37-2732B(a)(4)(A), the district court was required to sentence Burns to a determinate sentence of at least three years, which is the total fixed portion of Burns' sentence.

In addition to the district court's fixed sentence being the most lenient sentence possible, the indeterminate portion of the court's sentence is also reasonable. On appeal Burns claims that, "with programming," he "could likely be successful in the community." (Appellant's brief, p.13.) Burns is not the ideal candidate for community supervision. Not only was he actually on probation when he committed the instant offense (see PSI, p.3-5), his mother recognized that he should then have been placed in confinement to aid in his rehabilitation (3/5/2015 Tr., pp.4-5). Moreover, while Burns has mental health issues, as the district court noted, he refused to take his medications while in jail, instead "cheeking" them. (Id., pp.23-27.)

Burns also maintains that his sentence is excessive because he has the support of friends and strong family relations, and his prior convictions were all for misdemeanors. (Appellant's brief, p.14.) Both arguments fail. First, the support of friends and strong family relationships did not prevent Burns' crimes. In fact, his mother seems to have been unaware that her son was operating a drug trafficking enterprise until she was informed of the fact at sentencing. (See 3/5/2015 Tr., pp.11-12.) Second, as explained above, the determinate portion of Burns' sentence is actually the mandatory minimum for his crime; that he has also been convicted of driving under the influence and driving without privileges multiple times prior to his current felonies only adds weight to the reasonableness of the district court's concurrent sentences.

The district court properly exercised its discretion when it imposed concurrent sentences of 10 years with two fixed and 12 years with three years fixed on Burns' convictions for felony driving under the influence and trafficking in methamphetamine. Because Burns has failed to show that his sentences are excessive, he has failed to show an abuse of the court's discretion. His sentences should be affirmed.

CONCLUSION

The state respectfully requests that this Court affirm Burns' convictions and sentences for both driving under the influence and trafficking in methamphetamine.

DATED this 31st day of May, 2016.

/s/ Russell J. Spencer
RUSSELL J. SPENCER
Deputy Attorney General

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 31st day of May, 2016, served a true and correct copy of the attached BRIEF OF RESPONDENT by causing a copy addressed to:

SALLY J. COOLEY
DEPUTY STATE APPELLATE PUBLIC DEFENDER

to be placed in The State Appellate Public Defender's basket located in the Idaho Supreme Court Clerk's office.

/s/ Russell J. Spencer
RUSSELL J. SPENCER
Deputy Attorney General

RJS/dd